

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Kristopher Lee Roybal,

No. 21-CV-2026 (KMM/ECW)

Petitioner,

v.

ORDER

Paul Schnell, Comm’r of Corrections

Respondent.

This matter is before the Court on Kristopher Lee Roybal’s application for leave to proceed in forma pauperis (“IFP”) on appeal. ECF 51. Mr. Roybal wishes to appeal a judgment that denied his petition for a writ of habeas corpus. ECF 47.

A litigant who seeks to be excused from paying the filing fee for an appeal in a federal case may apply for IFP status under 28 U.S.C. § 1915. See also Fed. R. App. P. 24(a). To qualify for IFP status, the litigant must demonstrate that he or she cannot afford to pay the full filing fee. 28 U.S.C. § 1915(a)(1). Even if a litigant is found to be indigent, however, IFP status will be denied if the Court finds that the litigant's appeal is not taken “in good faith.” 28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24(a)(3). To determine whether an appeal is taken in good faith, the Court must decide whether the claims to be raised on appeal are factually or legally frivolous. *Coppedge v. United States*, 369 U.S. 438, 444-45 (1962). An appeal is frivolous, and therefore cannot be taken in good faith, “where it

lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989).

The Court will grant Mr. Roybal’s IFP application. First, Mr. Roybal’s IFP application shows that he is currently incarcerated and has no assets that could be used to pay for the filing fee and costs of his appeal. He is therefore financially eligible for IFP status. Second, even though the Court previously declined to grant a Certificate of Appealability (“COA”) to Mr. Roybal (*see* ECF 47 at 4) and remains certain that Mr. Roybal’s habeas petition was properly denied, his appeal is not deemed to be “frivolous” as that term has been defined by the Supreme Court. Therefore, Mr. Roybal’s appeal is taken in good faith for purposes of 28 U.S.C. § 1915(a)(3) and Fed. R. App. P. 24(a)(3), and his IFP application will be granted. The Court notes, however, that Mr. Roybal’s appeal will not proceed unless the Court of Appeals grants him a COA. *See* Fed. R. App. P. 22(b)(1).

I. Order

Based on the discussion above, **IT IS HEREBY ORDERED THAT**

1. Petitioner Kristopher Lee Roybal’s application to proceed *in forma pauperis* on appeal (ECF 51) is GRANTED.

Date: February 25, 2024

s/Katherine Menendez

Katherine Menendez

United States District Judge